



April 29, 1999

Mr. Eric Magee
Staff Attorney
Legal and Compliance Division
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR99-1177

Dear Mr. Magee:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123713.

The Texas Department of Insurance (the "department") received a request for information regarding Home State County Mutual ("Home State") and American Hallmark State and County Mutual ("American Hallmark"). You indicate that the requested information regarding American Hallmark will be provided to the requestor. Home State has asserted a proprietary interest in its filing of September 11, 1998. Although you do not take a position as to whether Home State's filing must be disclosed, you raise section 552.305 of the Government Code and ask that we consider Home State's contention that the filing is excepted from disclosure.

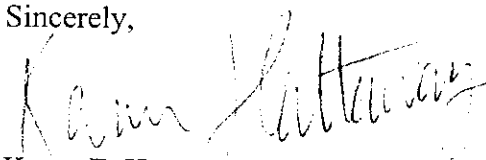
This office notified Home State about the request for information and its opportunity to submit arguments against the disclosure of its filing. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Open Records Act in certain circumstances). Home State responded to the notice by contending that portions of its September 11 filing are excepted from disclosure pursuant to section 552.110 of the Government Code. Home State has marked the portions of its filing that it contends are excepted from disclosure.

Section 552.110 protects the property interests of third parties by excepting from disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. In Open Records Decision No. 639 (1996), this office announced that it would follow the federal courts' interpretation of exemption 4 to the federal Freedom of Information Act when applying the second prong of section 552.110 for commercial and financial information. In *National Parks & Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), the court concluded that for information to be excepted under exemption 4 to the Freedom of Information Act, disclosure of the requested information must be likely either to (1) impair the government's ability to obtain necessary information in the future, or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974). A business enterprise cannot succeed in a *National Parks* claim by a mere conclusory assertion of a possibility of commercial harm. Open Records Decision No. 639 at 4 (1996). To prove substantial competitive harm, the party seeking to prevent disclosure must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure. *Id.*

Having reviewed Home State's arguments, we find that the release of the marked portions of the filing would cause Home State to suffer substantial competitive harm. Therefore, the department must withhold the marked information from disclosure pursuant to section 552.110. Because we find that the marked information is protected under the second prong of section 552.110, we do not address Home State's trade secret arguments.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

Ref.: ID# 123713

encl. Submitted documents

cc: Mr. Todd L. Oswald
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